COMMERCE DEPARTMENT

MINNESOTA PUBLIC UTILITIES COMMISSION

January 24, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW, Room TW-B204
Washington, DC 20554

RE: **Joint Comments of the Minnesota Department of Commerce and Minnesota Public Utilities Commission**
Docket No. FCC-15-155

Dear Ms. Dortch:

The Minnesota Public Utilities Commission and the Minnesota Department of Commerce (together, The Minnesota Agencies) respectfully submit these comments in response to the Federal Communications Commission (Commission) November 16, 2017 FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY, FCC 15-155.

Sincerely,

/s/ JESSICA LOOMAN
Minnesota Department of Commerce
Commissioner

/s/ NANCY LANGE
Chair, Minnesota Public Utilities Commission

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low Income Consumers	)	**WC Docket No. 17-287**
	)	
Lifeline and Link Up Reform and Modernization	)	**WC Docket No. 11-42**
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	**WC Docket No. 09-197**

Joint Comments of the Minnesota Public Utilities Commission and Minnesota Department of Commerce

INTRODUCTION

The Minnesota Public Utilities Commission and the Minnesota Department of Commerce (together, The Minnesota Agencies) respectfully submit these comments in response to the Federal Communications Commission (Commission) November 16, 2017 FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY, FCC 15-155.

NOTICE OF PROPOSED RULEMAKING

A. Respecting the States' Role in Program Administration

1. **Reauthorizing State Commissions to Designate Lifeline ETCs**

   The Federal Communications Commission (Commission) proposes to reverse the preemption of the states from their primary responsibility to designate eligible telecommunications carriers (ETCs) under section 214 (e) of the Communications Act (Act).

The Minnesota Agencies support the Commission proposal to eliminate state preemption of stand-alone LBP designations.

The Minnesota Agencies support this action of the Commission. The Minnesota Agencies have extensive experience in reviewing applications for designation of Lifeline ETCs. This experience includes determining eligibility of telecommunications providers with a state certificate of authority to operate in Minnesota, as well as wireless providers that do not require a state certificate of authority. Returning the authority to designate ETCs to the states places the determination of eligibility with the agencies that are close to both the consumers and the providers.

2. **Partnering with States for the Successful Implementation of the National Verifier**

The Commission seeks comments on ways states can be encouraged to embrace the National Verifier and measures the Commission can take if states are unwilling to engage in the effort to deploy the National Verifier at reasonable costs. The Commission proposes to partner with states for the successful implementation of the National Verifier.

The Minnesota Agencies support efforts by the FCC to partner with states to successfully implement the National Verifier. The Commission can accomplish this in a number of ways.

- First, it should find the correct contact in each state to serve as the facilitator and coordinator for the project; in Minnesota, it is the state Commission, which is the correct contact in most states.[1]
- Second, Minnesota suggests that these expectations be committed to writing from the Commission or USAC, so that the relevant Minnesota agencies holding the state databases understand the official nature of this request and can more fully respond to the request. The Minnesota Agencies' experience in late 2016 and early 2017 was that verbal requests to Minnesota databases were made via conference call, but the requests came across as somewhat unofficial to the Minnesota social service agencies. In addition, proposed deadlines and the type and frequency of data access were not outlined, and so the agencies were not able to respond.
- Third, to the extent it has not already done so, the Commission or USAC, perhaps in partnership with others, should survey each state to better understand each relevant database and to compile the state laws governing

[1] Some of the initial contacts between USAC and a variety of Minnesota state agencies originally caused confusion over the National Verifier project and what was expected of the agencies. Minnesota presumes this was exploratory as a part of the new project and it is now clear that the Minnesota Commission is the right contact for the National Verifier.

the access of those databases, so that the magnitude of the work involved to implement the National Verifier is clear.[2] Part of the success of this project is for the Commission and USAC to fully understand the steps they need to take to implement the National Verifier. This survey should include the type of agreements each state may require in order to access their databases.

- Fourth, the Commission and USAC should host regular communications on the progress of the first states to enter into the National Verifier so that other states can plan accordingly.
- Finally, the Commission or USAC may gain information through conversations with social service agencies on data sharing practices for other assistance programs. Social service agencies have more expertise in administering social service programs and may be willing to share that expertise as to data sharing and other related functions.

Because of the magnitude of the National Verifier project, Minnesota cautions against the idea of halting enrollment by Lifeline applicants in states where the National Verifier has been delayed. State laws or other state-specific circumstances may temporarily delay implementation of the National Verifier in some locations. Until the Commission or USAC has completed the tasks listed above, it would be premature to consider a measure which would penalize consumers through no fault of their own.

The Minnesota agencies make one final observation on the magnitude of the National Verifier. Other more established programs, such as energy assistance programs, have successfully established constructs where a federal role sets overall vision and direction while states implement application processing and verification. As the Commission is considering the details of how to encourage states to assist in National Verifier implementation, it may choose to look at established models that rely on less direct federal control but still successfully accomplish eligibility verification.

B. Improving Lifeline's Effectiveness for Consumers

1. Focusing Lifeline Support to Encourage Investment in Broadband –Capable Networks

The Commission proposes limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice-and broadband-capable last-mile network. It proposes changing its rules from requiring that ETCs "offer the services that are supported by Federal universal service support

[2] The National Regulatory Research Institute (NRRI) is experienced in conducting surveys of state commissions, and may be able to assist in this effort.

mechanisms under section 254(c) of this title, either by using its own facilities or a combination of its own facilitates and resale of another carrier's services" [3] to one in which last-mile services are facilities based.

The Minnesota Agencies are concerned that the Commission proposal may jeopardize the ability of many customers to receive Lifeline service.

In Minnesota, only three of the 19 wireless ETCs appear to qualify under the proposed enhanced definition of "facilities based." The Minnesota Agencies are concerned that many Lifeline subscribers would not have a viable alternative if the last mile facilities are required of the ETC. For many poor, some of whom have no permanent address, a wireless telephone is the only option to meet their communication needs and be able to manage in society.

If the FCC chooses to adopt a last mile facilities requirement, instead of eliminating Lifeline support to subscribers that do not have a last mile facilities provider available, the Minnesota Agencies recommend expanding Lifeline support to a three-tiered structure.

Today, one tier of Lifeline support is the $9.25 per month discount, and a second tier of Lifeline support goes to subscribers in rural Tribal areas who may receive "enhanced" support of an additional $25 per month. If the FCC adopts a facilities based requirement for basic support, the Minnesota Agencies recommend that the Commission consider adding a third tier of Lifeline support for consumers using those providers that satisfy the current requirements to be an ETC. The Commission could have a higher tier of Lifeline support where the ETC provides last mile facilities and continue the $9.25 per month where wireless carriers offer facilities based service, but not "last mile" facilities.

The desire to encourage investment in facilities, while laudable, should not result in harm to consumers with limited incomes who already have limited options with respect to telecommunications services. Other programs, such as the high cost fund, are better able to address the incentives for investment than the Lifeline program. Making Lifeline more available for eligible customers, rather than less, serves the Congressional goal of universal service.

2. Retaining Voice as an Eligible Service

The Commission also seeks comment on whether the current support for voice only service should continue to be phased out, currently scheduled to end on December 1, 2021.

[3] 47 U.S.C. 214(e)(1)(A).

The Minnesota Agencies support the offering of voice only service

The Minnesota Agencies strongly support requiring voice to remain as a component of Lifeline service. Voice service provided through the Public Switched Telephone Network (PSTN) is the lynchpin of universal service. Requiring voice service of all ETCs ensures that users have access to emergency services. Further, the phasing down of Lifeline support appears to be counter-productive in meeting the communication needs of low income consumers. The level of support received from the Lifeline programs should ensure that consumers can afford basic voice service.

The Minnesota Agencies also note that the benchmark cost of voice service appears to be an inappropriate measure of determining whether to end support for voice only services in urban areas since the high cost fund offsets the cost of service in many rural areas. Low income people live in both urban and rural areas. Therefore, the price of service to consumers, not the benchmark cost, is the appropriate guide to determine affordability.

3. Enabling Consumer Choice

The Commission requests comments on TracFone's proposal to allow providers to offer the minimal service requirements through the basis of undefined "units." The Minnesota Agencies do not support the TracFone proposal because the term 'units' is not adequately defined and appears to be a moving target. Different companies may have trouble applying units in similar ways and the Minnesota Agencies believe there is not a reasonable proposal to ensure that these units meet minimum service standards.

The Commission also requests comment on eliminating the Lifeline program's "equipment requirement." The Minnesota Agencies support standards for providers who supply handsets. The cost of smartphones may well be prohibitive for many low income users. Reliance upon the provider for a telephone that is often refurbished or otherwise less than first-rate quality suggests that providers should be required to adhere to a set of standards such that users can rely on the devices they are given.

C. Steps to Address Waste, Fraud, and Abuse

1. Improving Program Audits

The Commission seeks comment on transitioning from the mandatory $5 million threshold for the biennial independent audits under section 54.420(1) of the Commission's rules to a purely risk-based model of targeted Lifeline audits. The

Minnesota Agencies favor adoption of such a targeted process and recommends that the Commission collaborate with state regulatory agencies in identifying incidents of concern.

The Minnesota Agencies believe that it is effective and efficient to create partnerships with state commissions that have consumer complaint offices. These consumer complaint offices are the places where issues are first observed. The consumer complaint office in Minnesota actively monitors recent ETC applicants, identifies problem ETCs and takes action at the state level while also notifying the Commission of its actions[4].

While Minnesota and other states are already committed to assisting the Commission in reducing abuse of the program, a better two way established line of communication and set of protocols would encourage more awareness and action on the part of states. Specifically, the Commission's rules could mandate investigation of any state commission report of suspected fraud and abuse. Second, the Commission could impose a deadline on itself in investigating and responding to those state reports[5]. Finally, the Commission, or USAC, could host monthly or quarterly calls with state commissions for an exchange of information on pending investigations related to fraud and abuse. The Minnesota Agencies also do not object to a requirement placed on states to affirmatively monitor reports of fraud, abuse, or waste and to be obligated to report them to the FCC.

2. Improving Program Integrity in Eligibility Verification

The Commission seeks comment on prohibiting agent commissions related to enrolling subscribers In the Lifeline program and on codifying a requirement that ETC representatives who participate in customer enrollment register with USAC.

The Minnesota Agencies support registering agents and addressing commissions.

Minnesota recognizes the importance of ensuring that ETC customer enrollment representatives or agents are registered by personal identifying information, and that the identity of the representative/agent is associated with each application they process. Steps should be taken to ensure that when fraudulent filings cluster around an individual or their employer, that appropriate audits and enforcement, if appropriate,

[4] See for example, Docket P6400/C-16-395, the Minnesota Department of Commerce's and Office of the Attorney General's Joint Complaint against Villaire Communications Company. After Minnesota and other states notified the FCC, the FCC issued a NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, FCC 07-148, finding serious defects in the company's records.

[5] Minnesota realizes that each investigation is unique and the time to resolve each can vary. However, the Commission could still impose deadlines for responding to state notifications and provide status updates.

will ensue. Incentives to agents, if properly structured, can provide a value to eligible populations and address the significant under enrollment of eligible households. Registering those individuals processing applications, and associating them with the submission results, would allow for electronic monitoring of anomalies with particular representatives/agents and the timely resolution of any associated questions.

In response to the GAO report, on July 11, 2017, Chairman Pai directed USAC to take four measures for sales agent accountability. Those actions are:

1. Require each sales agent to register with sufficient information so that USAC can verify the agent's identity and determine the ETC(s) he or she is working for. Each registered sales agent shall receive a unique identifier that must be used for all such agent interactions with the NLAD.
2. Adjust NLAD to lock out sales agents for a set period of time after too many invalid subscriber entry attempts. USAC shall determine the appropriate parameters for this lock-out system and may escalate the length of any lock-out period based on repeated misuse. USAC may also determine that certain sale agents must be locked out of the system pending further investigations.
3. Determine how best to incorporate the inclusion of sales agent registration and unique identifier into existing audit programs or whether special audits of sales agents would further reduce waste, fraud, and abuse; and
4. Refer any substantial enrollment or recertification of ineligible subscribers by particular sales agents, as well as any program violations by sales agents, to the Commission's Office of Inspector General for evaluation as to whether civil or criminal action as appropriate and to the Enforcement Bureau for administrative action and remedies.[6]

Minnesota Agencies support these measures and their codification.

The Minnesota Agencies support recertifying when reliance on a specific program ceases.

The Commission further asks for comment on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program used to demonstrate their initial eligibility. If the consumer is no longer participating in the program used to demonstrate initial eligibility, then subscribers should be prohibited from self-certifying unless they provide supporting documentation.

The Minnesota Agencies support targeted risk-based reviews.

---

[6] Letter by Chairman Ajit V. Pai, Chairman, FCC, to Ms. Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, July 11, 2017.

The Minnesota Agencies agree that the Commission should require USAC to conduct ongoing targeted risk-based reviews of eligibility documentation or dispute resolution documentation. The Minnesota Agencies strongly recommend that such reviews be conducted in coordination and cooperation with the individual state commissions and consumer affairs offices that are involved.

The Minnesota Agencies support use of the Social Security Master Death Index to verify enrollment.

Finally, in the area of preventing waste, fraud, and abuse, the Commission asks if it should codify a requirement that subscribers be compared to the Social Security Master Death Index during the enrollment and recertification process. The Minnesota Agencies agree that applicants be screened to ensure they are alive and that the Social Security Master Death Index is the list against which to check at the time of enrollment and recertification. Minnesota supports this being a routine USAC function.

In response to the GAO report, on July 11, 2017 Chairman Pai directed USAC to take measures regarding deceased subscribers[7].

Minnesota supports application of the direction given at that time for deceased subscribers which includes:

1. De-enrollment of deceased subscribers and recovery of associated improper Lifeline payments;
2. Immediate quarterly statistically valid sampling of subscribers for checking against the SS Master Death Index listing (with appropriate consequences when warranted);
3. Inclusion of such sampling and review for deceased subscribers as part of USAC audits of ETC's;
4. Automating a process of comparing subscribers records against the Social Security Master Death Index list when enrolling or recertifying; and
5. Referrals of ETCs with substantial numbers of deceased subscribers enrolled or recertified to the Commission's Office of Inspector General for evaluation as to whether civil or criminal action is appropriate and to the Enforcement Bureau of administrative action and remedies.

[7] Letter by Chairman Ajit V. Pai, Chairman, FCC, to Ms. Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, July 11, 2017; downloaded from https://apps.fcc.gov/edocs_public/attachmatch/DOC-345729A1.pdf

D. Adopting a Self-Enforcing Budget

The Commission proposes a strict budget for Lifeline disbursements and proposes various ways in which such a budget would be self-enforcing. The FCC also requests comments regarding the level the budget should be set at and the prioritization that should be followed in the event the cap is reached.

The Minnesota Agencies recommend that the budget be set at such a level sufficient to facilitate additional enrollment of eligible households. Unreasonable restrictions on the Lifeline budget would impede the ability of states like Minnesota to enroll more qualifying households. During 2015, no state signed up more than 52% of eligible households. In Minnesota only 17 percent of those eligible for Lifeline actually subscribed to the service.[8] Nearly 486,000 Minnesota households could have benefitted from the program in 2015 but did not.[9] These statistics suggest that either the benefit is not worth much to subscribers, or more likely, that subscribers are not learning about the benefit. The Minnesota Agencies believe the latter to be the case. With the implementation of the National Verifier, and other waste and fraud reducing measures, the Commission should anticipate savings which can be used toward serving low income subscribers. Once it first focuses on enrollment, then the Commission can determine the appropriate budget.

The Minnesota Agencies recommend that the Commission engage in activities in cooperation with the states aimed at increasing the current participation levels. Such activities could include working cooperatively with social service agencies, on-line and radio and television advertisements, and bill inserts. Increasing participation of eligible subscribers should be deemed a positive result and the budget should not be cut to provide those who subscribe to Lifeline a reduced benefit if additional eligible customers also participate in the program.

E. Improving Provider Incentives for Lifeline Service

The Commission states in its Order that 85 percent of all Lifeline program participants subscribed to plans that were free to the end-user and asks if customers would value the service more if the subscriber were required to contribute some portion of the bill than if the subscriber received the service for no cost. The Commission offers no indication of any research to indicate likely success of this proposal. Minnesota is skeptical that requiring subscribers to pay a portion of the bill will necessarily result in more subscribers to Lifeline. On the other hand, if the Commission determines to set a strict budget that needs to be spread over all qualified subscribers, requiring a portion of the service to be paid for by the subscriber may allow an increased number of eligible households to receive a discount.

[8] http://usac.org/li/about/process-overview/states/participation.aspx
[9] *Ibid*.

The Commission also requests comments on whether setting a maximum discount level would make minimum service standards unnecessary. The Minnesota Agencies do not believe that a maximum discount level would make minimum service standards unnecessary. Setting limits on discount levels should not be equated with minimum service standards. In many areas of Minnesota there are few choices of service providers, particularly among wireless providers. With the requirement of last mile facilities based mobile providers; choices of providers will be fewer in the future than now. With few providers, there will be no market pressure to assure sufficient service standards. Without competition there is little to induce providers to provide good service, particularly with respect to handsets. The Minnesota Agencies believes service standards and maximum discount levels should be kept as separate issues.

NOTICE OF INQUIRY

A. Lifeline Support that Targets the Digital Divide

The NPRM seeks comment on how to bridge the digital divide, including rural/tribal customers and non-adopters. The Minnesota Agencies believes that it is appropriate to continue allowing voice-only as an option for those who cannot or will not venture into the broadband world. Research has shown that "lack of comfort and familiarity with technology" is one of the primary barriers to adoption of broadband technology, particularly among older adults.[10] Rural/tribal areas are generally more costly to serve due to sparse and low-income population and subsidies provided to voice-only service will keep subscribers connected and provide a foundation for the demand for broadband services and the installation of broadband facilities.

Wireless service that is not last-mile facilities based is often the preferred choice or only option for digitally redlined areas, which are often comprised of sparsely populated rural/tribal areas where a landline phone may be of little use to individuals when they are not at home.

The Minnesota Agencies recommend that the Commission institute a further tier in its Lifeline structure. As discussed above, if the FCC chooses to adopt a last mile facilities requirement, it should do so as a tier of Lifeline support where the ETC provides last mile facilities, while maintaining support for consumers using those providers that satisfy the current requirements. The desire to encourage investment in facilities should not result in harm to consumers with limited incomes who already have limited options with respect to telecommunications services.

[10] "Tech Adoption Climbs Among Older Adults", Pew Research Center, May 17, 2017, Section 2: Barriers to adoption and attitudes towards technology, http://www.pewinternet.org/2017/05/17/barriers-to-adoption-and-attitudes-towards-technology/

B. Benefit Limits

The FCC seeks comment on whether it should implement a benefit limit that restricts the amount of support a household may receive or the length of time a household may participate in the program. The FCC notes that, on average, households remain on Lifeline for 1.75 years.

A benefit length of time is pointless for both the customer and the company. If customers must recertify each year, and the National Verifier is functioning properly, there should be no concern about defrauding the system. If Lifeline is available only for a given time, then the result is likely to be no telecommunications services for the many customers that remain low income and any investment the provider made will have no future return. Thus, restricting the length of time for the benefit may serve to inhibit facilities investment.

In conclusion, Minnesota recommends that the Commission adopt measures to improve the Lifeline program, including:

1) Return ETC designation to the states.
2) Include voice as a supported service.
3) Take more a proactive and structured approach to consulting with states on National Verifier implementation.
4) Consult with states more closely to better understand the impact of program design changes such as a self-enforcing budget and details on the implementation of the National Verifier.
5) Implement measures to reduce waste, fraud, and abuse as long as they are not overly burdensome to Lifeline applicants.
6) If the FCC chooses to adopt a last mile facilities requirement, it should do so as a tier of Lifeline support, where the Lifeline support is retained for those providers that satisfy the current requirements, and higher level of support is available for ETC provides with last mile facilities.